IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

CRL.A.No. 2372 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.626/2006 Dated 24/11/2006
ST.4073/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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APPELLANT: COMPLAINANT:

T.A.THOMAS,
S/O.THERMADOM ANTONY, MANAGING DIRECTOR,
TRADE LINK CHITS & FINANCIAL ENTERPRISES (P)LTD.,
KATTOOR, REP.BY POWER OF ATTORNEY HOLDER,
T.D.JOHNSON, S/O.THATTIL DEVASSY JOHNSON,
PADIYARAM VILLAGE,P.O.PUTHANPEEDIKA,THRISSUR.

BY ADV. SRI.M.C.JOHN
SRI.C.PRABIN BENNY

RESPONDENTS: ACCUSED:

P.K.RAJESH,
S/O.RAMAKRISHNAN, POOTHERI HOUSE,
THAYAMKULANGARA DESOM, CHEVOOR VILLAGE,
THRISSUR.

BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.
SMT.MANU MATHEW

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2372 of 2006

Dated this the 20th February, 2007.

J U D G M E N T

The complainant in S.T.No.4073/2005, on the file of the Judicial First Class Magistrate Court-I, Thrissur, is the appellant. The complaint preferred by the appellant under Section 138 of the Negotiable Instruments Act, in short 'the Act', was dismissed, and accused acquitted, on the ground that the complainant was absent on the appointed date. Application filed by the complainant to condone his absence was rejected by the court below. The same is under challenge through this appeal, on obtaining leave of this Court.

2. The counsel appearing for the appellant submitted that the complainant was present on almost all posting dates. However, on the appointed date, 16.8.2006, the complainant was absent, as he was laid up due to sickness, and an application to condone his absence was also made. Counsel submits that the rejection of the application to condone the absence of the complainant itself is against law. He also submits that the appellant has got serious contentions and an opportunity may be given to raise the same.

3. After hearing the submissions made by either side, I find it necessary to give an opportunity to the parties to raise their respective contentions. Therefore, I set aside the impugned order, dated 16.8.2006, and restore S.T.No.4073/2005 to the file of the Judicial First Class Magistrate Court-I, Thrissur.

4. The parties shall appear before the court below on 20.3.2007.

5. As the case is of the year 2005, the learned Magistrate shall dispose of the same, at the earliest and in any case, within four months from the date of appearance of the parties.

The Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.